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In re application of	:	
Lawrence Tamarkin, et al	:	
Application No. 08/586,427	:	DECISION GRANTING
Filed: January 16, 1996	:	PETITION
Attorney Docket No. 01994-0022	:	

This is a decision in response to the communication filed March 22, 1996, which is being construed as a petition requesting that the above-identified application be treated as a proper continuation application under 37 CFR 1.62 and accorded a filing date of January 16, 1996.

On February 23, 1996, Application Processing Division mailed a Notice of Improper Filing stating that the application papers deposited January 16, 1996, were not in compliance with 37 CFR 1.62 since the prior application was abandoned, or proceedings terminated on November 14, 1995.

In response, on March 22, 1996, the present petition was filed wherein petitioners argue that the notice was mailed in error since a 3-month petition for extension of time was timely filed in the prior application on January 16, 1996. Petitioners explain that the six-month response period, including extensions of time, ran through January 14, 1996, which was a Sunday and that Monday, January 15, 1996, was a federal holiday. Therefore, petitioners request that the application be accorded a filing date under 37 CFR 1.62.

A review of the record reveals that petitioners are correct. In view of the petition for extension of time filed January 16, 1996, the prior application would not have become abandoned until after midnight, January 16, 1996. Therefore, copendency did exist between Application Nos. 08/215,030 and 08/586,427 on January 16, 1996, the date of deposit of Application No. 08/586,427.

The petition is granted. The notice mailed February 23, 1996, is hereby vacated. No petition fee is required since the petition was necessitated because of PTO error.

The application is being returned to Application Processing Division for further processing with a filing date of January 16, 1996, as a continuation application under 37 CFR 1.62 of prior Application No. 08/215,030.



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